

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications)	
In the 800 MHz Band)	
)	WT Docket No. 02-55
Consolidating the 900 MHz Industrial/Land)	
Transportation and Business Pool Channels)	

**COMMENTS OF THE CITY OF PHILADELPHIA ON
THE SUPPLEMENTAL COMMENTS OF
THE “CONSENSUS PARTIES”**

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**COMMENTS OF THE CITY OF PHILADELPHIA ON
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The City of Philadelphia ("City") submits the following comments on the "Supplemental Comments" filed in the above-captioned proceeding by the self-designated "Consensus Parties" on December 24, 2002. The City has previously articulated its concerns regarding proposals for realignment of the 800 MHz band in both individual Comments and in Comments filed jointly with members of the group of jurisdictions known as the Public Safety Improvement Coalition. This submission addresses issues specific to the relocation plan presented in the Supplemental Comments.

1. The plan proposed in the Supplemental Comments does not assure that public safety agencies will be reimbursed for relocation costs.

At the outset, we must voice our apprehension over the adequacy of reimbursement of costs associated with relocating or retuning. The City recently rolled out a new public safety communications system. Implementation of the new system required a Citywide effort and substantial time, planning and resources, as well as considerable expense – in excess of \$52 million. The City cannot support further expense for relocating the system to new frequencies in the 800 MHz band. We strongly oppose any relocation plan that does not guarantee full reimbursement to the jurisdictions affected.

The Supplemental Comments provide no such assurance. They set forth a plan to eliminate interference with public safety communications caused by Commercial Mobile Radio Services ("CMRS") providers, but leave public safety users of the spectrum exposed to probable financial burden by proposing a reimbursement cap for our costs. This concession to the

industry is unacceptable. No public safety entity should be left at risk of non-reimbursement for curing a situation caused by commercial users of the spectrum. The proposed cap on the relocation fund for public safety agencies should be eliminated, and public safety users should be assured that all relocation and retuning costs will be fully reimbursed. Any final relocation plan adopted by the Commission should clearly provide that public safety agencies are entitled to full reimbursement for both the direct and indirect costs of relocation, including expenses for planning and design, modifications to existing equipment and software, replacement equipment and software where modifications are not sufficient, reprogramming radio and base stations, expert engineering and other technical assistance, and all necessarily incurred costs for managing the changeover, including, in particular, police and fire officer overtime and other costs incurred to maintain adequate coverage levels while radios and base stations are out of service for retuning or modification.

Given the near impossibility of estimating costs on a project of this magnitude, the \$700 million cap placed on the relocation fund for public safety under the plan is unacceptable. The Supplemental Comments provide an estimate of the cost of the reassignment, but limit the estimate to the direct costs of retuning. The estimate is suspect even as a projection of retuning costs because it is based on a sample of only 16 public safety systems, representing a small minority of the 55 NPSPAC Plan Regions and a much smaller minority of the systems that will be affected. The retuning effort and its cost depend on the state of the technology in each system. Newer systems may be able to retune with software reprogramming for radios and base stations; older systems may require hardware changes or even replacement. Retuning costs can accordingly be expected to vary widely. Yet no analysis is provided to justify the extrapolation from sixteen systems to the entire nation.

But even if the retuning estimate were reliable, it obviously does not represent the entire cost of relocation because it does not include most of the cost categories listed above. The Supplemental Comments acknowledge that an accurate prediction of how many radios will need to be replaced rather than merely retuned cannot be obtained at this time, and certainly not without much more investigation. But this is the largest cost factor for many jurisdictions, particularly those with older systems and older radios. Additionally, although Nextel may have experience in relocating incumbent 800 MHz licenses, neither Nextel nor anyone else has ever carried out a frequency relocation project of the scale proposed, let alone done so under the time constraints contemplated by the Supplemental Comments. Moreover, under the scheme proposed in the Supplemental Comments, all mediation, arbitration and Relocation Coordination Committee ("RCC") administrative costs are also to be paid from the relocation fund. Total cost of mediation and arbitration proceedings is speculative at best, and considering the scope of the undertaking, could be a substantial portion of the fund, further reducing the dollars available to compensate public safety agencies.

For all of these reasons, there certainly should be no cap on the relocation fund. As to the \$700 million proposed for the relocation for public safety users, it is probable that a cap at this amount will result in substantial under-funding – in other words, heavy subsidies by local taxpayers to pay for the resolution of this largely industry-created interference issue.

It is true that the Supplemental Comments attempt to address these concerns by providing that no public safety entity will be required to move without full compensation. However, “full compensation” is nowhere defined in the proposed relocation plan. Instead, licensees are to submit their expenses to the RCC for review and approval *after* relocation is completed and costs incurred. This raises two problems: While an effort will be made to specify reimbursable costs

during the Phase I negotiation period, there is no allowance for the expenses we cannot reasonably identify during the negotiation period because most of us have never carried out the kind of wholesale frequency relocation here contemplated. Yet the Phase I list of reimbursable costs presumably will be the most any of the public agencies can expect to recover. The more important problem, of course, is that no financial guarantees by any party back the “no relocation without full reimbursement” rule. Where relocation proceeds and all costs are incurred before any of us know the sufficiency of the relocation fund, or the sufficiency of the negotiated list of allowable costs, it is obvious that the financial risk is on the public safety agencies. We see little in the Supplemental Comments to mitigate that risk in the event the proposed scheme does not work out as anticipated.

Equally important, Nextel’s proposed \$25 million cash deposit to the reimbursement fund is insufficient given the \$850 million promised by Nextel for the entire relocation process (\$700 million of which is to be dedicated for public safety licensees and \$150 million for other licensees). The security offered by Nextel to cover the \$825 million balance – i.e. the appraised value of the 10 MHz of replacement spectrum in the 1.9 GHz band – is speculative at best in today's volatile telecommunications market. If Nextel fails to pay the full amount committed and the market values the spectrum at substantially less, then the public safety agencies apparently will be required to pay the difference themselves, in the form of a reimbursement shortfall. The Supplemental Comments state that Nextel's commitment to funding is further "cemented" by its surrender of 700 MHz band licenses to the federal government at the time the Commission grants a license for the 10 MHz of 1.9 GHz spectrum. That may be true of Nextel’s commitment, but the surrendered 700 MHz licenses do nothing to secure payment to public safety agencies for any shortfall of promised reimbursement funds. The uncertain security

offered by Nextel should be augmented by a cash deposit that is much more than the three per cent proposed. Recognizing that Nextel may not be financially able to escrow the entire amount to which it is committed at the start of the relocation project, the Commission should require Nextel to schedule annual escrow payments in the range of \$100 million to \$200 million per year, depending upon the planned implementation schedule. Even if Nextel were to find itself insolvent midway through the relocation effort, the local governments should be assured that such a contingency will not preclude or materially reduce the reimbursement of their costs. After all, our taxpayers will be required to pay for relocation up front and will find out only after the funds are irrevocably committed if the optimistic funding scheme proposed in the Supplemental Comments fails. There is, of course, an obvious solution: the federal government can provide a reimbursement guarantee for costs that Nextel fails to reimburse. If the Commission is fully persuaded that the funding scheme proposed in the Supplemental Comments is viable and will fully reimburse public agency costs, then it should be prepared to advocate a federal guarantee. If the Commission is not so persuaded, it should not adopt this proposed scheme, which would shift the financial risk to our police and fire departments.

2. The proposed plan does not provide for adequate representation of public safety agencies on the RCC or arbitration panels.

The proposed membership of the Relocation Coordination Committee does not reflect the priority that the City believes should be attached to public safety in the relocation process. This committee wields great power under the proposed relocation plan, coordinating frequency designation, establishing the arbitration panel, and holding the purse strings for reimbursement. Because public safety concerns should be uppermost in the decision-making of the RCC, there should be a corresponding majority representation of public safety agencies in the RCC

membership. Under the plan proposed in the Supplemental Comments, Nextel would be entitled to one selection on a five person RCC, and the other members would be chosen from among members of the Land Mobile Communications Council ("LMCC"). While it is true that the LMCC is a nonprofit association of organizations representing land mobile radio carriers, equipment manufacturers and users of such services and equipment, many of the trade associations and other entities that make up the Council have their own legitimate commercial interests in the reassignment and cannot be counted on to give public safety concerns the high priority they require if the public – that is, the citizens whose safety is our responsibility – are to have confidence that their health, safety and welfare will outweigh any private commercial interests. The reasonable solution is to provide for a majority of public safety members on the RCC.

The City recommends that the RCC have seven members – four representatives from the public safety community, and three representatives of the commercial licensees, including Nextel. The four public safety representatives should be selected (or nominated for Commission selection) by organizations of public safety officers and/or public officials such as the International Association of Chiefs of Police, the Major Cities Chiefs Association, the International Association of Fire Chiefs, the National Governors' Association, the National League of Cities, the National Conference of Mayors, and the Association of Public-Safety Communications Officials-International, Inc. One representative should be designated by Nextel and two other industry representatives should be designated (or nominated for Commission selection) by appropriate industry associations.

The Supplemental Comments do not address the make-up of the arbitration panels that will be created by the RCC to settle disputes between incumbent band users and Nextel. Proper

representation on these panels is essential to add legitimacy to the relocation process and protect the interests of both the industry and public safety users – particularly where the proposed arbitration scheme gives the panel plenary power to choose between relocation plans that may be very different in their content and their impact on users. We urge the Commission to specify the composition of the arbitration panels rather than leaving it to the RCC, and to ensure equal representation by public safety agencies and the industry. For example, the arbitration panels could consist of three members, one chosen by the public safety representatives on the RCC and one chosen by the industry representatives on the RCC, with the third member chosen by the other two.

3. The schedules proposed in the Supplemental Comments should be adjusted to permit resolution of existing spectrum inefficiencies in the NPSPAC bands.

The aggressive relocation schedules outlined in the Supplemental Comments do not give the 55 NPSPAC Plan Regions sufficient time to make reallocations of spectrum and provide the spectrum space needed for other developing technologies being implemented among Regions. Within NPSPAC Plan Regions, public safety agencies now use a mix of "high-site noise-limited" systems and some "low-site cellular-type" systems similar to those used by CMRS providers elsewhere on the 800 MHz band. While one-for-one realignment from channels 601-830 to channels 1-120 moves the relocation process along the most quickly, the time to correct inefficiencies that have accumulated over fifteen years of the regional planning process is now, when all systems need to be retuned to new frequencies. For example, in the most recent filing window under the regional planning process, both Philadelphia and the Commonwealth of Pennsylvania were allocated less spectrum than would have been available had spectrum been allocated more rationally, with full consideration given to the incompatibility of differing

technologies. This situation is not uncommon. Currently, the regional planning process has resulted in a practice of relying on geographical buffers between facilities of licensees using different technologies. With different co-channel spacing criteria applicable to each different technology, much valuable spectrum is rendered unusable. There is now an opportunity to cluster compatible uses within the NPSPAC portion of 800 MHz band to maximize spectrum efficiency. Without giving the Regions time to negotiate more harmonious reallocations of spectrum to accommodate varied technologies, overall spectrum allocation will not be optimized. Accumulated inefficiencies will instead be transferred from one block of 800 MHz frequencies to another. The relocation schedule should be adjusted to permit the Regions sufficient time to address and resolve this issue.

4. The Commission should require CMRS operators to cooperate actively in resolving interference issues now and throughout the relocation process.

Finally, even with the aggressive timeframe proposed by the Consensus Parties, it will be several years before relocation is completed. Meanwhile, public safety interference from CMRS providers continues. Nextel and the other CMRS providers that are currently creating harmful interference to public safety users and other incumbents should be required to take significant steps to mitigate the interference now and during the relocation process. This must include sharing site-specific information that is not listed on Economic Area-type licenses, which are granted by the commission on the basis of market area rather than specific facility transmission locations. While the carriers have often shown cooperation after interference has been proven by the affected public agency, public safety users are entitled to a more proactive program, with active industry cooperation and support, for eliminating interference. At a minimum, CMRS providers should be required to join public safety agencies, when requested, to perform field tests

near Nextel and other CMRS antennae, and to conduct engineering studies of intermodulation and transmitter noise/receiver desense. Nextel and other CMRS operators should be required to license and keep current documentation of the specific operating channels, exact frequencies, and operating parameters used at each site, and to make that information available to public safety users when needed to resolve interference. Economic Area-licensed carriers should also be required to provide this information on request. It is notoriously difficult to obtain this basic information from the industry at the present time, even where interference impairs public safety communications. Police officers and fire fighters do not want dead spots in their radio systems as a result of interference from CMRS providers, but it is far more dangerous to their safety not to know when they are entering a known radio trouble spot before arriving on scene and losing the radio lifeline. These are critical issues for the public safety community, and their resolution should not have to wait years for the relocation process to be completed. The Supplemental Comments direct licensees to use the Commission's informal complaint process to resolve interference issues. This approach cannot provide the relief needed because an informal complaint can be filed with the Commission only after the public safety agency has already experienced interference and the resulting threat to public safety and welfare. We need active cooperation from CMRS operators to identify potential interference before it occurs, and to correct interference as soon as it arises, not months later, after the complaint process has run its course. The City urges the Commission to establish effective interim procedures for resolving interference issues while the relocation process proceeds.

5. Conclusion.

The City recognizes the critical importance of the Commission's acting now to adopt a plan for permanently eliminating interference with public safety radio communications in the

800 MHz band. However, the City is also aware that this necessarily will involve reconciliation of diverse interests and will entail substantial expense. Public safety must take priority in this process and receive preferential treatment over any commercial or independent interests. Moreover, public safety entities must be assured they will be fully reimbursed for the substantial monetary burden this process will entail, with a federal guarantee of funding to cover any shortfall in private funding for relocation. Public safety users must also be relocated properly as opposed to quickly, and must have adequate representation on the committees and panels governing the relocation process. Finally, regardless of future relocation plans, an immediate strategy to address the current CMRS-public safety interference problem must be created and implemented.

Dated: February 10, 2003

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